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Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Security Council
Sixty-first year

Identical letters dated 27 March 2006 from the Secretary-General to the President of the General Assembly and the President of the Security Council

I have the honour to transmit a request from the President of the International Tribunal for the Former Yugoslavia ("International Tribunal") that directly relates to its ability to implement its Completion Strategy (see annex). The President has requested that Judge Joaquín Martín Canivell, a national of Spain, be able to continue to serve in the trial in Case No. IT-00-39, *Prosecutor v. Krajišnik*, to which he was appointed as an ad litem judge on 1 May 2003, and which is still ongoing before the International Tribunal, and to see the case through to its completion.

You will recall that Judge Canivell's term of office as a member of the pool of ad litem judges had come to an end on 11 June 2005 and that he was not re-elected as an ad litem judge. However, in response to the request contained in my letter of 6 January 2005 (A/59/666-S/2005/9), the Security Council, by its resolution 1581 (2005) of 18 January 2005, and the General Assembly, by its decision 59/406 B of 20 January 2005, decided, inter alia, that Judge Canivell, once replaced as an ad litem judge of the International Tribunal, should finish the *Krajišnik* case which he had begun before the expiry of his term of office. The Council, by that same resolution, as well as the Assembly, by its decision, took note of the International Tribunal's intention to finish the *Krajišnik* case before the end of April 2006, which would have kept Judge Canivell's service at the International Tribunal within the period of the three years for which ad litem judges are allowed to serve in trials during their term, pursuant to article 13 ter (2) of the statute of the International Tribunal.

The President of the International Tribunal has informed me that the *Krajišnik* case is expected to be completed only by August or September 2006. The reasons for this change are set forth in the President's letter.

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Consequently, I would appreciate confirmation from both the Security Cou
and the General Assembly that Judge Canivell can continue to sit in the *Kraji*
case beyond April 2006 and see the case through to its completion, notwithstan
the fact that the cumulative period of his service in the International Tribunal w
then attain and exceed three years.

(*Signed*) Kofi A. An

Annex

Letter dated 22 March 2006 from the President of the International Tribunal for the Former Yugoslavia to the Secretary-General

By the present letter, I wish to bring to your attention the situation of Judge Joaquín Martín Canivell (Spain), who had been elected as an ad litem Judge by the General Assembly at its fifty-fifth session on 12 June 2001 and whose four-year term ended on 11 June 2005.

On 1 May 2003, Judge Canivell was appointed as an ad litem judge to *Prosecutor v. Krajišnik* (Case No. IT-00-39), an ongoing case in which Judge Canivell continues to sit.

In this respect, the Security Council, by resolution 1581 (2005) of 18 January 2005, had specifically authorized Judge Canivell to finish the *Krajišnik* case, notwithstanding the fact that his term as an ad litem judge was to come to an end on 11 June 2005. The Council, by that same resolution, took note of the International Tribunal's intention to finish the *Krajišnik* case before the end of April 2006, which would have kept Judge Canivell's service at the International Tribunal within the period of time for which ad litem judges are allowed to serve in trials during their term, pursuant to article 13 ter (2) of the statute of the International Tribunal, which provides, in relevant part, as follows:

> During their term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years.

Owing to unforeseen circumstances, the *Krajišnik* case is now expected to be completed by August or September 2006, in spite of the fact that the Trial Chamber has made every effort to progress Mr. Krajišnik's trial in the most efficient manner, while respecting the requirements of a fair trial. The Defence for Mr. Krajišnik has faced severe problems organizing its case presentation, owing to Defence staff turnover and the challenge of responding to the Prosecution's long and complex case, among other factors. The Trial Chamber has, as a result, received numerous requests from the Defence for adjournment of the trial. While the Trial Chamber has never fully acceded to these requests, it has found it necessary to grant the Defence small additional amounts of time for case preparation. In the meantime, the Trial Chamber has kept up the pressure on the Defence through a series of written and oral orders.

In addition, it has recently been brought to the Trial Chamber's attention the fact that Mr. Krajišnik's health may be deteriorating as a result of the pressure he is currently under and other factors. This may necessitate further delays. While the Trial Chamber will continue to press for maximum efficiency, it will not be able to bring this trial to a close until it is satisfied that Mr. Krajišnik has had a fair opportunity to defend himself.

As indicated above, Judge Canivell's four-year term as an ad litem judge has come to an end. Furthermore, he is not part of the newly elected pool of ad litem judges. However, as Security Council resolution 1581 (2005), which provides the

legal basis for Judge Canivell's continuing to sit in the *Krajišnik* case, did take note of the International Tribunal's intention to finish the case before the end of April 2006, I would appreciate confirmation from the Council as well as from the General Assembly that he can continue to sit in this case beyond that date and see the case through to its completion, notwithstanding the fact that the cumulative period of his service would then attain and exceed three years.

I would therefore be grateful if you would bring the present letter to the attention of the Security Council as well as the General Assembly for their consideration. Thank you in advance for your action in this regard.

(*Signed*) Fausto **Pocar**
President